

Homestead exemption

McGregor v. Michael Grassmuck, Inc.
In re George and Katherine McGregor

OR-98-1732-RyBK
697-67049-fra7

6/3/99

BAP aff'g Judge Alley

Unpublished

Prior to the Chapter 7 petition date, the Debtors sold their principal residence. The proceeds from the sale were placed into a segregated bank account and held as exempt property under the Oregon homestead exemption. Pursuant to the homestead statute, the sale proceeds had to be reinvested in another residence within one year to retain their exempt status.

Six months after the sale, Debtors filed their bankruptcy petition. They scheduled the proceeds as exempt pursuant to the Oregon homestead exemption. Because the exemption was valid at the time that the petition was filed, no one objected to the claimed exemption within 30 days after the § 341(a) meeting of creditors.

When the one-year reinvestment period expired without the Debtors reinvesting the proceeds from the sale in another residence, the Chapter 7 trustee filed an objection to the exemption and a motion for turnover of the funds. The Bankruptcy Court denied the objection as moot, finding that the proceeds were no longer exempt under Oregon law, and ordered the Debtors to turn over the funds to the Trustee. Debtors appealed, arguing that the trustee did not object to the exemption within 30 days of the § 341(a) meeting as required by the Code.

In affirming the Bankruptcy Court, the BAP distinguished the present case from the Supreme Court case of Taylor v. Freeland & Kronz, 503 U.S. 638 (1992). In Taylor, the debtor claimed an exemption to which he was not entitled at the petition date. The court held that the trustee must in that case object to the claimed exemption within the statutory deadline. Failure to do so forecloses the trustee from objecting in the future notwithstanding that the debtor may have no basis for claiming the exemption. In the present case, in contrast, there was no basis at the petition date for objecting to the exemption because it was validly claimed. When the proceeds were not reinvested within one year of the sale, they lost their exempt status under Oregon law and became subject to turnover by the Trustee.

E99-15(15)

(No underlying opinion)

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL OF THE NINTH CIRCUIT

In re) BAP No. OR-98-1732-RyBK
GEORGE L. MCGREGOR and)
KATHERINE M. MCGREGOR,)
Debtors.)

GEORGE L. MCGREGOR and)
KATHERINE M. MCGREGOR,)
Appellants,)
v.)
MICHAEL A. GRASSMUECK, INC.,)
Chapter 7 Trustee,)
Appellee.)

Bk. No. 697-67049-fra7

FILED

JUN -3 1999

NANCY B. DICKERSON, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

MEMORANDUM

Argued By Telephonic Conference and Submitted on May 20, 1999

Filed - June 3, 1999

Appeal from the United States Bankruptcy Court
for the District of Oregon

Honorable Frank R. Alley III, Bankruptcy Judge, Presiding

Before: RYAN, BRANDT, and KLEIN, Bankruptcy Judges.

¹This disposition is not appropriate for publication and may not be cited to or by the courts of this Circuit except when relevant under the doctrines of law of the case, res judicata, or collateral estoppel. See Ninth Circuit BAP Rule 13 and Ninth Circuit Rule 36-3.

1 Several months prior to filing their chapter 7² bankruptcy
2 petition, George and Katherine McGregor ("Debtors") sold their
3 principal residence. The proceeds from the sale were placed into a
4 segregated bank account and held as exempt property under the
5 Oregon homestead exemption. Pursuant to the exemption statute, the
6 sale proceeds had to be reinvested in another residence within one
7 year to retain their exempt status.

8 Six months after the sale, Debtors filed their bankruptcy
9 petition. Debtors scheduled the proceeds as exempt pursuant to the
10 Oregon homestead exemption. Because the exemption was valid at the
11 time that the petition was filed, no one objected to the claimed
12 exemption within thirty days after the § 341(a) meeting of
13 creditors.

14 When the one-year reinvestment period expired without Debtors
15 reinvesting the proceeds from the sale in another residence, the
16 chapter 7 trustee ("Trustee") filed an objection to the exemption
17 and a motion for turnover of the funds. The bankruptcy court
18 denied the objection as moot, finding that the proceeds were no
19 longer exempt under Oregon law, and ordered Debtors to turn over
20 the funds to Trustee. Debtors timely appeal.

21 We AFFIRM.

22
23
24 ²Unless otherwise indicated, all chapter, section, and rule
25 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330 and to
26 the Federal Rules of Bankruptcy Procedure, Rules 1001-9036.

1 I. FACTS

2 On July 1, 1997, Debtors sold their principal residence and
3 placed the sale proceeds into a segregated bank account. A portion
4 of the deposited sale proceeds constituted exempt property as a
5 matter of law pursuant to Oregon's Revised Statutes ("O.R.S.")
6 § 23.240(2).³

7 On December 12, 1997, Debtors filed their bankruptcy petition.
8 They claimed the sale proceeds as exempt in the amount of \$24,900
9 pursuant to O.R.S. § 23.240(2).

10 On February 4, 1998, the § 341(a) meeting of creditors was

11
12

 ³O.R.S. § 23.240 states in pertinent part:

13 (1) A homestead shall be exempt from sale on
14 execution, from the lien of every judgment and from
15 liability in any form for the debts of the owner to
16 the amount in value of \$25,000, except as otherwise
17 provided by law. The exemption shall be effective
18 without the necessity of a claim thereof by the
19 judgment debtor. When two or more members of a
20 household are debtors whose interests in the
21 homestead are subject to sale on execution, the lien
22 of a judgment or liability in any form, their
23 combined exemptions under this section shall not
24 exceed \$33,000. The homestead must be the actual
25 abode of and occupied by the owner, or the owner's
26 spouse, parent or child

(2) The exemption shall extend to the proceeds
derived from such sale to an amount not exceeding .
. . \$33,000, . . . if the proceeds are held for a
period not exceeding one year and held with the
intention to procure another homestead therewith.

O.R.S. § 23.240 (West 1999) (emphasis added).

1 held. Trustee did not object to any of Debtors' claimed
2 exemptions at the § 341(a) meeting or within thirty days
3 thereafter.⁴

4 During the one-year reinvestment period, Debtors located
5 another residence that they intended to purchase. However, Debtors
6 failed to close their purchase within that period.

7 After the one-year reinvestment period had expired, Trustee
8 filed a motion for turnover (the "Motion") of the sale proceeds and
9 an objection (the "Objection") to the claimed exemption. On
10 September 1, 1998, a hearing was held on the Motion and the
11 Objection. The bankruptcy court held that the proceeds were no
12 longer exempt under O.R.S. § 23.240(2) because Debtors failed to
13 reinvest the proceeds in another residence within one year.
14 Accordingly, the bankruptcy court ordered Debtors to turn over the
15 sale proceeds to Trustee. The court also overruled the Objection
16 as moot.

17 The order was entered on September 16, 1998, and Debtors filed
18 a timely notice of appeal.

19
20

⁴Rule 4003(b) provides in pertinent part:

21 (b) **Objections to Claim of Exemptions.** The
22 trustee or any creditor may file objections to
23 the list of property claimed as exempt within
24 30 days after the conclusion of the meeting of
the creditors . . . unless, within such period,
further time is granted by the court.

25 FED. R. BANKR. P. 4003(b).
26

1 II. STANDARD OF REVIEW

2 The bankruptcy court's determination of the validity of a
3 homestead exemption based on undisputed facts is a question of law
4 that is reviewed de novo. See Ball v. Payco Gen. Am. Credits, Inc.
5 (In re Ball), 185 B.R. 595, 596 (9th Cir. BAP 1995); Jones v.
6 Heskett (In re Jones), 180 B.R. 575, 577 (9th Cir. BAP 1995).

7
8 III. ISSUE

9 Whether the bankruptcy court erred in ordering Debtors to turn
10 over the sale proceeds to Trustee because Debtors failed to satisfy
11 the reinvestment requirement of O.R.S. § 23.240(2) even though
12 Trustee failed to timely object under Rule 4003(b).

13
14 IV. DISCUSSION

15 The Bankruptcy Court Did Not Err When It Ordered Debtors
16 to Turn Over the Sale Proceeds After Debtors Failed to
17 Comply with the Reinvestment Requirement of O.R.S.
18 § 23.240(2).

19 The bankruptcy court granted the Motion because the proceeds
20 from the sale of Debtors' residence lost their exempt status when
21 Debtors failed to reinvest the sale proceeds in another residence
22 within one year of the sale as required by O.R.S. § 23.240(2).

23 Debtors argue that the bankruptcy court erred in granting the
24 Motion because Trustee did not timely object to the claimed
25 exemption. Debtors rely on the plain language of Rule 4003(b) and
26 the Supreme Court case Taylor v. Freeland & Kronz, 503 U.S. 638,

1 643 (1992), which Debtors assert stand for the proposition that a
2 trustee must object within thirty days after the § 341(a) meeting
3 in order to invalidate a claimed exemption. Debtors argue that
4 Trustee's failure to object to the claimed exemption within thirty
5 days following the § 341(a) meeting precluded him from later
6 recovering the sale proceeds as non-exempt property. We disagree.

7 "When a debtor files a bankruptcy petition, all of his
8 property becomes property of the bankruptcy estate." Taylor, 503
9 U.S. at 642 (citing 11 U.S.C. § 541). "The Code, however, allows
10 the debtor to prevent the distribution of certain property by
11 claiming the property as exempt." Id. "Section 522(b) provides
12 for exemptions under federal or state law." Arrol v. Broach (In re
13 Arrol), 170 F.3d 934, 935 (9th Cir. 1999). "The federal exemptions
14 listed in section 522(d) are available to a debtor in bankruptcy if
15 the state where the bankruptcy petition has been properly filed has
16 not 'opted out' of the federal exemption scheme; otherwise, the
17 debtor is entitled to claim the exemptions provided by the law of
18 the state where the petition was filed." Id. at 935-36 (citing 11
19 U.S.C. §§ 522(b)(1) and (b)(2)(A)). Pursuant to O.R.S. § 23.305,
20 "Oregon has opted out of the federal exemption scheme." Mitchell
21 v. West (In re West), 81 B.R. 22, 26 (9th Cir. BAP 1987) (citing
22 O.R.S. § 23.305). The Ninth Circuit has held that "[w]hen a debtor
23 elects to claim an exemption under state law pursuant to 11 U.S.C.
24 § 522, he is required to comply with the state law in effect at the
25 time of the filing of his petition." England v. Golden (In re

1 Golden), 789 F.2d 698, 700 (9th Cir. 1985).

2 Section 522(1) provides the procedure for claiming an
3 exemption. Pursuant to § 522(1), "the debtor shall file a list of
4 property that the debtor claims as exempt under subsection (b) of
5 this section. . . . Unless a party in interest objects, the
6 property claimed as exempt on such list is exempt." 11 U.S.C.
7 § 522(1) (emphasis added).

8 "Fed.R.Bankr.P 4003 governs the objection process." Canino v.
9 Bleau (In re Canino), 185 B.R. 584, 590 (9th Cir. BAP 1995).
10 Pursuant to Rule 4003(b), the trustee and creditors have thirty
11 days from the initial meeting of creditors to object or, within
12 that time, to request an extension of time to object. See FED. R.
13 BANKR. P. 4003(b).

14 Debtors argue that the thirty-day objection period in Rule
15 4003(b) must be strictly construed, see Taylor, 503 U.S. 638, and
16 that Taylor governs the outcome of this case. We disagree.

17 In Taylor, the debtor scheduled a pending employment
18 discrimination lawsuit as exempt. Id. at 640. Although the debtor
19 did not have a right to exempt more than a small portion of the
20 proceeds, the debtor claimed the full amount as exempt. Id.
21 However, because the trustee thought that the lawsuit had little
22 value to the bankruptcy estate, he decided not to object to the
23 claimed exemption within the thirty-day period set forth in Rule
24 4003(b). Id. at 641.

25 After the debtor recovered a \$110,000 settlement from the
26

1 lawsuit, the trustee brought a motion for turnover of the recovered
2 funds. Id. The trustee argued that because the debtor had "no
3 statutory basis" for claiming the full amount of the proceeds from
4 the lawsuit as exempt, the court should order the debtor to turn
5 over the portion of the funds that were improperly claimed as
6 exempt. Id.

7 The bankruptcy court agreed and ordered the debtor to turn
8 over the funds to the trustee. Id. at 638. The district court
9 affirmed. Id. However, the Third Circuit reversed, finding that
10 the bankruptcy court erroneously required the debtor to turn over
11 the settlement proceeds despite the trustee's failure to timely
12 object to the claimed exemption. Id.

13 The Supreme Court affirmed the Third Circuit, finding that the
14 trustee "apparently could have made a valid objection under
15 § 522(1) and Rule 4003 if he acted promptly." Id. at 642. The
16 Court, relying on the plain language of Rule 4003(b) and § 522(1),
17 held that "trustee's failure to [object] prevents him from
18 challenging the validity of the exemption now." Id.

19 Taylor is distinguishable from the situation here. In Taylor,
20 the trustee could have timely objected to the claimed exemption
21 under Rule 4003(b). The Supreme Court held that the trustee's
22 failure to object prevented him from later challenging the validity
23 of the exemption. See Taylor, 503 U.S. at 642. Here, however,
24 there was no basis for Trustee to object to the claimed exemption
25 within the thirty-day objection period because the claimed
26

1 exemption was valid at the time. Because the continued validity of
2 the exemption was contingent upon Debtors reinvesting the proceeds
3 in another residence within the one-year reinvestment period of
4 O.R.S. § 23.240(2) and the reinvestment date occurred outside of
5 the objection period of Rule 4003(b), the bankruptcy court
6 concluded that Rule 4003(b) did not apply.

7 This conclusion is consistent with the Ninth Circuit's holding
8 in Golden. In Golden, the debtor sold his residence prior to
9 filing his bankruptcy petition. After filing bankruptcy, the
10 debtor claimed the proceeds of the sale as exempt pursuant to
11 California law. See Golden, 789 F.2d at 700. The California
12 homestead exemption statute, however, required the debtor to
13 reinvest the sale proceeds in another residence within a six-month
14 period. During the thirty-day objection period set forth in Rule
15 4003(b), no one objected to the claimed exemption because, at that
16 time, the proceeds were properly claimed as exempt. However, after
17 the objection period expired, the debtor failed to timely reinvest
18 the sale proceeds in another residence as required by the
19 California homestead exemption statute. Consequently, the trustee
20 brought a motion for turnover of the funds. Id. at 698.

21 The bankruptcy court granted the motion, determining that the
22 sale proceeds lost their exempt status under California law because
23 the debtor failed to reinvest the proceeds in another residence
24 within the six-month reinvestment period. Consequently, the
25 bankruptcy court ordered the debtor to turn over the funds to the
26

1 trustee. Id. The district court and the Ninth Circuit affirmed.
2 Id.

3 The Ninth Circuit noted that "when a debtor elects to claim an
4 exemption under state law pursuant to 11 U.S.C. § 522, he is
5 required to comply with the state law in effect at the time of the
6 filing of his petition." Id. (citation omitted) (emphasis added).
7 Because the debtor failed to reinvest the sale proceeds within six
8 months of the sale as required by California law, the Ninth Circuit
9 held that the bankruptcy court properly granted the trustee's
10 motion for turnover of the funds. Id. at 700. The Ninth Circuit
11 stated that to allow otherwise "would frustrate the objective of
12 the . . . homestead statute and bankruptcy act itself." Id.

13 In addition, the Ninth Circuit stated that the trustee was not
14 estopped from recovering the sale proceeds even though the trustee
15 did not provide notice to the debtor that the trustee intended to
16 claim the sale proceeds as estate property. The court reasoned
17 that

18 [b]ecause the exemption remained in effect
19 during the six-month period, and the trustee
20 had no right to claim the proceeds during that
21 period, we see no reason for requiring that he
22 notify the debtor of a claim not yet in
existence. Given the clarity of provisions
requiring reinvestment, Golden could not have
reasonably relied upon trustee's silence as an
indication of a permanent exemption.

23 Id. at 701 (emphasis added).

24 Thus, the Ninth Circuit, interpreting California law, held
25 that the debtor was effectively on notice that the exemption would
26

1 not last beyond the six-month reinvestment period if the debtor
2 failed to satisfy the condition subsequent of reinvestment. The
3 homestead proceeds lost their exempt status when the debtor failed
4 to reinvest the proceeds within the six-month reinvestment period
5 set forth in the California homestead exemption statute. Id.

6 Here, Golden is dispositive. Debtors claimed a homestead
7 exemption under an Oregon statute that was virtually identical to
8 the California homestead statute involved in Golden.⁵ As in
9 Golden, the homestead exemption statute required Debtors to
10 reinvest the proceeds from the sale of their residence to purchase
11 another residence within a specified time period in order to
12 maintain the validity of the exemption. In addition, the
13 reinvestment deadline involved in both cases extended beyond the
14 objection period of Rule 4003(b). Notwithstanding the trustee's
15 failure to object within the thirty-day period, the Ninth Circuit
16 applied California law in determining whether the debtor was not

17
18 ⁵Debtors argue without providing any support that the
19 California and Oregon statutes are distinguishable because (1) the
20 California homestead statute has a six-month reinvestment
21 requirement whereas the Oregon homestead statute has a one-year
22 reinvestment requirement and (2) the Oregon homestead statute has
23 an "intent to reinvest" requirement that the California statute did
24 not have. At oral argument, Debtors' counsel admitted that there
25 were no material differences between the statutes. We agree.
26 Indeed, in interpreting the California exemption statute, the Ninth
Circuit stated that "the Oregon statute is similar to the
California statute, because '[b]oth require reinvestment [of
proceeds] within a fixed period of time.'" Golden, 789 F.2d at 700
(quoting White v. White (In re White), 727 F.2d 884, 888 (9th Cir.
BAP 1984)) (alteration in original).

1 entitled to the exemption because the debtor failed to satisfy the
2 condition subsequent for a valid exemption by timely reinvesting
3 the sale proceeds. See Golden, 789 F.2d at 700. Similarly, we
4 must look to the Oregon homestead statute to determine whether
5 Debtors lost their exemption.

6 Here, Debtors were required to reinvest their sale proceeds in
7 another residence within one year in order to retain their
8 homestead exemption. See O.R.S. § 23.240(2). The bankruptcy
9 court found that Debtors failed to reinvest the proceeds in another
10 residence within the one-year reinvestment period. This finding is
11 not in dispute. Consequently, the bankruptcy court did not err in
12 determining that the sale proceeds lost their exempt status when
13 Debtors failed to reinvest the funds within one year of the sale of
14 their residence. "Although exemption statutes are to be liberally
15 construed, . . . to allow an indefinite period for reinvestment is
16 simply to ignore the plain language of the statute." Earnest v.
17 Stookey (In re Stookey), 42 B.R. 395, 397-98 (Bankr. D. Or.
18 1984) (interpreting the "condition subsequent" of O.R.S.
19 § 23.240(2)) (citation omitted). Because the Oregon homestead
20 statute contains a condition subsequent that requires "an initial
21 view from the future before a decision [can] be made on the
22 allowance of the exemption . . . [,] the court cannot avoid, after a
23 year's passage, a judicial inquiry to determine if the debtor
24 either receives or keeps, as the case may be, the exemption." Id.

1 at 388-89.⁶

2 Furthermore, unlike the facts in Taylor, Rule 4003(b) is
3 inapplicable to the facts here. As in Golden, the bankruptcy court
4 properly granted the Motion despite the fact that Trustee did not
5 object to the claimed exemption during the thirty-day objection
6 period because during that period the proceeds were exempt. As the
7 Ninth Circuit stated, "we see no reason for requiring that [the
8 trustee] notify the debtor of a claim not yet in existence."
9 Golden, 789 F.2d at 701. Similarly, raising an objection during
10 the thirty-day period would have been frivolous because the sale
11 proceeds at the time were validly claimed as exempt. Because there
12 was no reason for Trustee to object to the claimed exemption under
13
14
15

16 ⁶Debtors also argue that exemption rights are determined as of
17 the date of the bankruptcy filing and that the bankruptcy court
18 erred in invalidating the exemption because the exemption was valid
19 at that time. We disagree. Generally, exemption rights are
20 determined as of the date that the bankruptcy petition is filed.
21 See Harris v. Herman (In re Herman), 120 B.R. 127, 130 (9th Cir.
22 BAP 1990). However, the Ninth Circuit recognizes a limited
23 exception to the general rule where a state exemption statute
24 contains a "sunset provision" that conditions validity of an
25 exemption on the satisfaction of a condition subsequent such as
26 reinvesting the sale proceeds within a specified time period. See
In re Combs, 166 B.R. 417, 420 (Bankr. N.D. Cal. 1994) (citing
Golden, 789 F.2d at 700). Because bankruptcy courts must apply the
state law as it exists at the time of the bankruptcy filing, see
Golden, 789 F.2d at 700, they must consult facts occurring after
the petition date when state law so provides.

1 Rule 4003(b), Taylor is inapposite.⁷

2 Finally, Debtors argue that Trustee was required to request an
3 extension of time to object to the claimed exemption in order to
4 preserve his right to object if the reinvestment requirement was
5 not satisfied. We disagree. The Oregon exemption statute provides
6 that the proceeds are exempt "for a period not exceeding one year."
7 O.R.S. § 23.240(2). The language of the homestead exemption
8 statute clearly indicates that if the proceeds are not reinvested
9 within this time period, the proceeds will lose their exempt
10 status. "Given the clarity of the provision requiring
11 reinvestment, [debtor] could not have reasonably relied upon the
12 trustee's silence as an indication of a permanent exemption."
13 Golden, 789 F.2d at 701. Placing an affirmative duty on Trustee to
14 request an extension of time in order to preserve his right to
15 object in the event that Debtors failed to comply with the
16 reinvestment requirement would eviscerate the intent of the Oregon
17 legislature by making it possible to obtain a benefit that "they

18
19 "We note that other "Ninth Circuit cases have made inroads on
20 [sic] Taylor. For example, where a claimed exemption is ambiguous,
21 it will be resolved against the debtor." Canino, 185 B.R. at 593
22 (citing Seror v. Kahan (In re Kahan), 28 F.3d 79, 83 (9th Cir.
23 1994), cert. denied, 513 U.S. 1150 (1995); Hyman v. Plotkin (In re
24 Hyman), 967 F.2d 1316, 1319 (9th Cir. 1992)). Other cases "have
25 limited [Taylor's] broad rule, and have held that the debtor's
26 exemption must be in good faith to be upheld, notwithstanding the
absence of a timely objection." Hyman, 123 B.R. at 353 (quoting
Munoz v. Dembs (In re Dembs), 757 F.2d 777 (6th Cir. 1985)). Thus,
the exception recognized in Golden is consistent with other Ninth
Circuit authority.

1 would not have received if they had not filed bankruptcy."
2 Earnest, 42 B.R. at 399. "[W]hen the debtor fails to reinvest
3 homestead proceeds within [the specified time period] . . . the
4 proceeds should revert to the Trustee." Golden, 789 F.2d at 700.
5 This is especially true where Debtors had control of the proceeds
6 for one year "and did not reinvest the proceeds in a new
7 residence." Id. at 701. Cf. In re Seyfert, 97 B.R. 590, 592
8 (Bankr. S.D. Cal. 1989) (stating that the Golden exception does not
9 apply where the trustee compelled the sale of the residence
10 postpetition, removing the proceeds from the debtor's control).

11 Accordingly, the bankruptcy court did not err in granting the
12 Motion.

13 14 V. CONCLUSION

15 In sum, Debtors' failure to reinvest the sale proceeds within
16 one year of the sale of their residence as required by O.R.S.
17 § 23.240(2) caused the proceeds to lose their exempt status.
18 Consequently, the bankruptcy court did not err in granting the
19 Motion.

20 AFFIRMED.
21
22
23
24
25
26

U.S. Bankruptcy Appellate Panel
of the Ninth Circuit Court of Appeals
125 South Grand Avenue
Pasadena, California 91105
(626) 583-7906

NOTICE OF ENTRY OF JUDGMENT

BAP No. OR-98-1732-RyBK

RE: GEORGE L. MCGREGOR and KATHERINE M. MCGREGOR

A separate Judgment was entered in this case on 6/3/99.

BILL OF COSTS:

Bankruptcy Rule 8014 provides that costs on appeal shall be taxed by the Clerk of the Bankruptcy Court. Cost bills should be filed with the Clerk of the Bankruptcy Court from which the appeal was taken. Also see, Federal Rule of Appellate Procedure 39.

ISSUANCE OF THE MANDATE:

The mandate, a certified copy of the judgment sent to the Clerk of the Bankruptcy Court from which the appeal was taken, will be issued 7 days after the expiration of the time for filing a petition for rehearing unless such a petition is filed or the time is shortened or enlarged by order. See Federal Rule of Appellate Procedure 41.

APPEAL TO COURT OF APPEALS:

An appeal to the Ninth Circuit Court of Appeals is initiated by filing a notice of appeal with the Clerk of this Panel. The Notice of Appeal should be accompanied by payment of the \$105 filing fee and a copy of the order or decision on appeal. Checks may be made payable to the U.S. Court of Appeals for the Ninth Circuit. See Federal Rules of Appellate Procedure 6 and the corresponding Rules of the United States Court of Appeals for the Ninth Circuit for specific time requirements.